

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

CRL.A.No. 810 of 2002(C)

ST.3103/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

APPELLANT: COMPLAINANT

C.C.ZAKKARIYA, C/O.K.V.MOHAMMED,
BINDU MAHAL, VALANCHERRY P.O., VALANCHERY,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: ACCUSED & STATE

1. P.KUNHIMOHAMMED, PARASSERI HOUSE,
VAIKKATHUR, VALANCHERRY P.O., VALANCHERY,
MALAPPURAM DISTRICT.
2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI. P. RAVINDRA BABU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 810 OF 2002

Dated this the 26th day of March, 2007

JUDGMENT

The complainant in S.T. No.3103 of 1998 on the file of the Judicial First Class Magistrate's Court, Tirur is the appellant.

2. The appellant filed the complaint alleging that Ext.P1 cheque for an amount of Rs.78,000/- issued to him by the first respondent - accused towards discharge of a liability when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. The appellant further alleged that he sent Ext.P3 lawyer notice to the first respondent demanding repayment of the amount covered by the cheque, but he did not receive any reply to the said notice. Hence, he filed the complaint. To prove the case against the first respondent, the appellant - complainant himself was examined as PW.1 and Exts.P1 to P4 were produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the allegations in the complaint, the first respondent - accused stated that the

cheque in question was not issued in discharge of a legally enforceable debt, but it was issued to one K.V. Muhammed Master as security in respect of a kuri which he had bid. The first respondent had further stated that the appellant himself was a partner to the kuri. To prove his case, the accused himself and another were examined as DWs.1 and 2 respectively. DW.2 was the collection agent of the kuri conducted by K.V. Muhammed Master. After considering the evidence adduced by either side, the trial court found that the appellant failed to prove the transaction between himself and the first respondent which led to the issuance of Ext.P1 cheque and hence acquitted the first respondent.

3. This Court admitted the appeal and issued notice to the respondents. Even though notice was served on the first respondent, there was no appearance.

4. Learned counsel appearing for the appellant submits that the finding of the court below was not based on the evidence adduced by the appellant - complainant. Counsel further submits that as per the complaint, the transaction between the appellant and the first respondent has been clearly proved and that the appellant is entitled to the presumption under Sections 118 and 139 of the Negotiable Instruments

Act, 1881. Further, learned counsel submits that the court below was misled by the stand taken by the accused in the statement under Section 313 Cr.P.C.

5. The first respondent had admitted that he had signed Ext.P1 cheque. He also admitted receipt of notice sent by the appellant. Though the stand taken by the first respondent was that the cheque in question was issued by him as security in respect of a kuri which he had bid, no documentary evidence was produced to show that he was a subscriber to the kuri alleged to have been conducted by K.V. Muhammed Master. Hence, the stand taken by the first respondent was not established by any legally acceptable evidence. That apart, the court below had not considered the case set up by the appellant - complainant. The court below accepted the case of the accused only due to the fact that the address of the accused was shown as "C/o. K.V. Muhammed Master". That by itself is not a reason to conclude that the first respondent had no transaction with the appellant. Learned counsel appearing for the appellant now submits that the appellant may be given an opportunity to adduce further evidence to show that the cheque in question was issued towards discharge of a debt and not as security as pleaded by the first respondent. In the above circumstances, the finding of the court below requires reconsideration.

The judgment under appeal is accordingly set aside and the matter is remanded to the court below. The appellant and the first respondent may adduce further evidence, if any. The court below shall issue fresh notice to the first respondent and consider the matter afresh in the light of the evidence already adduced and additional evidence, if any, to be adduced by the parties.

The Crl. Appeal is allowed by way of remand. The parties shall appear before the court below on 25.5.2007. Records shall be forwarded to the court below.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A. NO.810/2002

JUDGMENT

26TH MARCH, 2007.